

Tax Type: Sales Tax
Issue: Exemption From Tax (Charitable or Other Exempt Types)

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 04-ST-0000
v.)	
)	Claim for Exemption Number
ABC CORP.)	
)	
Taxpayer)	

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; David N. Schellenberg of Elias, Meginnes, Riffle & Seghetti, P.C. for *ABC Corp.*.

ABC Corp. (“taxpayer”) applied to the Department of Revenue (“Department”) for an exemption identification number so that it could purchase tangible personal property at retail in Illinois and not pay the related taxes. The Department denied the application, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer is organized exclusively for charitable purposes under section 3-5(4) of the Use Tax Act (35 ILCS 105/3-5(4)) and section 2-5(11) of the Retailers’ Occupation Tax Act (35 ILCS 120/2-

5(11)). The Department contends that the primary purpose of the taxpayer's organization is not charitable. After reviewing the record, it is recommended that the taxpayer be granted an exemption number.

FINDINGS OF FACT:

1. *John Doe*, who is a Peoria businessman, and *Jane Doe*, who is a professional golfer, began hosting a charity Pro-Am golf tournament once a year with the Ladies Professional Golf Association ("LPGA"). The sole purpose of the tournament was to raise money for breast cancer research, education, and treatment. (Tr. pp. 9-12)

2. After raising a substantial amount of money, Mr. *Doe* and Ms. *Doe* decided to form a non-profit corporation to continue with their efforts. They formed the taxpayer, which is a non-profit corporation that was incorporated in Illinois on January 29, 1997. (Dept. Ex. #1; Tr. p. 11)

3. The Pro-Am tournament is a two-day event. On the first day, a foursome of amateurs plays with a professional LPGA golfer. On the second day, a twosome of amateurs plays with a professional LPGA golfer. This is done for a \$10,000 contribution to the taxpayer. (Tr. p. 12)

4. The golf tournament is not an LPGA sponsored event, and it occurs on days when an LPGA golf event does not take place. (Tr. p. 21)

5. The taxpayer's Articles of Incorporation and bylaws indicate that the taxpayer "is organized exclusively for charitable, educational, and scientific purposes as will qualify it as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, * * *. Except to the extent herein restricted, the Corporation may engage in any lawful activities in furtherance of its charitable, educational, or scientific purposes

herein described, including but not limited to, the raising of funds for education, research and treatment of breast cancer.” (Dept. Ex. #1)

6. The organizers chose a golf tournament as a way to raise money because Ms. *Doe* is a professional golfer, and they thought it was a unique way to raise a lot of money. Also, the LPGA has been affected by breast cancer, and two members of the LPGA are from Peoria. (Tr. pp. 11, 16)

7. In 2003, the Board of the taxpayer decided to expand its charitable giving and hire an executive director to pursue those efforts. On November 5, 2003, *Ms. Smith* became executive director of the taxpayer. She was hired with the intent to allow the taxpayer to help other charitable causes. (Tr. pp. 9, 11, 16)

8. In August 2004, the taxpayer sponsored a concert. All of the proceeds from the concert went to Children’s Hospital of Illinois. (Taxpayer’s Ex. #6; Tr. pp. 16-17)

9. The taxpayer’s expenses are high because the 36 professionals who play in the tournament are paid a fee for playing. Their fees vary depending on their popularity. In addition to the fees, on the second day of play the pros may win a \$50,000 purse. All of the 36 pros get a portion of the purse. The taxpayer also pays for the cost of playing at the golf course and for the dinners that it serves to the participants. (Tr. pp. 14-15; 21-22)

10. For the year ending December 31, 2000, the taxpayer’s total revenue was \$382,652. The taxpayer contributed \$135,000 of this to breast cancer research. The cost of the golf tournament that year was approximately \$234,000. (Taxpayer Ex. #8)

11. For the year ending December 31, 2001, the taxpayer’s total revenue was \$425,242. The taxpayer contributed \$200,000 of this to breast cancer research. The cost

of the golf tournament that year was approximately \$227,000. (Taxpayer Ex. #8; Tr. pp. 24-25)

12. For the year ending December 31, 2002, the taxpayer's total revenue was \$421,492. The taxpayer contributed \$200,000 of this to breast cancer research. The cost of the golf tournament that year was approximately \$225,000. (Taxpayer Ex. #8)

13. The money that was contributed to breast cancer research was used for various things, including funding for programs, educational materials, and purchases of the newest and most sophisticated equipment available for cancer detection. (Taxpayer's Ex. #2, 3, 4; Tr. pp. 13-14)

14. The taxpayer is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The Use Tax Act ("Act") (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 3-5 of the Act provides a list of tangible personal property that is exempt from the tax, and includes the following:

"(4) Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes *** On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department." (35 ILCS 105/3-5(4))

Section 2-5(11) of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*) contains a similar provision. (See 35 ILCS 120/2-5(11)).

The Department's initial tentative denial of the taxpayer's claim for an exemption identification number is presumed to be correct, and the taxpayer has the burden of

clearly and conclusively proving its entitlement to the exemption. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455, 459 (2nd Dist. 1995); Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the Department's determination. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim. Id. It is well-settled that tax exemption provisions are strictly construed and all doubts are resolved in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill.2d 576, 579 (1975).

In order to reach a finding that the taxpayer is organized and operated exclusively for charitable purposes, the following four factors are considered:

1. Whether the benefits derived are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
2. Whether the organization has no capital, capital stock or shareholders and earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter;
3. Whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and
4. Whether the exclusive (primary) use of its property is for charitable purposes.

Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968). These factors are not requirements but are guidelines to be considered in assessing an institution's charitable status. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2nd Dist. 1995)

The Department argues that the primary purpose of the taxpayer is to sponsor a golf tournament, and any benefits to charity as a result of the golf tournament are incidental. The taxpayer contends that its primary purpose is to raise funds for breast cancer research, and a golf tournament is the best method for the taxpayer to do this. The taxpayer notes that the percentage of revenue donated to charities has increased each year, and during 2003, the charitable contribution was more than 50% of the total income from the golf tournament.

The facts in the present case are similar to those in Quad Cities Open, Inc. v. City of Silvis, 208 Ill.2d 498 (2004). Quad Cities Open, Inc. was a non-profit corporation whose sole purpose was to sponsor a professional golf tournament. All profits in excess of a one-year operating contingency fund were used to promote the general welfare of the Quad Cities area residents or given to other 501(c)(3) organizations. For the fiscal years 1998 to 2000, the revenue from the Quad Cities Open tournament was approximately \$15,000,000, and approximately \$1,000,000 of this was distributed to legitimate charities. The remainder was used for the operating reserve fund, purses for the golfers, and the tournament's operating expenses.

Although the issue in Quad Cities Open is different than the one in the present case, the court's analysis is helpful. The issue in that case was whether tournament was operated "for gain" within the meaning of the Illinois Municipal Code, which would allow the local municipality to tax the gross receipts from the sale of the admission tickets. The court found that the term "for gain" does not include events organized and operated for charitable purposes. Quad Cities Open at 509. The court stated that the "fact that an athletic event operated by a charity generates revenue does not necessarily

destroy its charitable nature.” Id. at 510. The municipality had argued that the Open was not operated for charitable purposes because the amount donated to charity was an “exceedingly small fraction” of actual revenue. Id. at 515. The municipality contended that this rendered the charitable purpose incidental. The court stated that “[a] charity is not defined by percentages, and a charity does not lose its charitable character because it intends to generate a profit.” Id. at 516. “Charitable events often demand that a portion of the revenue be devoted to overhead costs in order to make the event possible.” Id.

In reaching its decision, the court cited, with approval, a case from the Supreme Court of Ohio, Akron Golf Charities, Inc. v. Limgach, Tax Commissioner, 34 Ohio St.3d 11 (1987). In that case, the court found that an organization that sponsored major golf tournaments in order to raise money for charities and keep a portion for a contingency fund was entitled to an exemption from sales and use taxes. The Quad Cities Open court noted that in Akron, the court stated that a professional golf event demands payment to the participants. The payment to the players is an operating expense, and this does not diminish the charitable purpose of the organization. Quad Cities Open, supra. The court agreed with the Akron court’s finding that the golf tournament was nothing more than a means to a charitable end. Id.

In the present case, the taxpayer’s Articles of Incorporation and by-laws indicate that it is organized for charitable, educational and scientific purposes, including raising funds for education, research and treatment of breast cancer. The golf tournament that is the main fundraising event for the taxpayer is simply a means to achieve the charitable goals. The fees paid to the professional golfers and the other operating expenses relating to the tournament are a necessary part of carrying out the event. Virtually all of the

revenue that remains after the taxpayer's operating expenses are covered is given to charity. The taxpayer has given a substantial amount of money to benefit breast cancer research and education, and the percentage of revenue given to charities has increased each year. The taxpayer is not operated for private profit or gain. The taxpayer, therefore, is entitled to the exemption identification number.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer be granted an exemption identification number.

Linda Olivero
Administrative Law Judge

Enter: February 15, 2005